

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN P. “JACK” FLYNN
LESLIE A. FLYNN,

Plaintiff,

- against -

CABLE NEWS NETWORK, INC.,

Defendant.

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Case: 1:21-cv-02587-GHW

**ANSWER OF CABLE NEWS NETWORK, INC.
TO PLAINTIFFS’ AMEDED COMPLAINT**

Defendant Cable News Network, Inc. (“CNN, Inc.”), by and through its undersigned counsel, hereby files its Answer and Affirmative Defenses to Plaintiffs John P. “Jack” Flynn and Leslie A. Flynn’s (“Plaintiffs”) Amended Complaint using the same headings and paragraph numbers employed by Plaintiff.

I. STATEMENT OF MATERIAL FACTS

1. CNN, Inc. respectfully refers this Court to the publications listed in Paragraph 1 of the Amended Complaint, which speak for themselves, but except as so referred, denies each and every allegation in Paragraph 1.

2. CNN, Inc. admits that there has been reporting regarding a connection between QAnon and retired Lieutenant General Michael T. Flynn, who is Plaintiffs’ brother, which speaks for itself. CNN, Inc. further admits that it telecasted “Inside the QAnon Conspiracy” on January 31, 2021, and respectfully refers this Court to the program for its true content and meaning. Except as so admitted or referred, CNN, Inc. denies each and every allegation in Paragraph 2.

3. CNN, Inc. denies each and every allegation in Paragraph 3 of the Amended Complaint.

4. CNN, Inc. admits that it telecasted “CNN Goes Inside A Gathering Of QANON Followers,” (the “Report”) which included the screenshot included in Paragraph 4 of the Amended Complaint. To the extent that Paragraph 4 of the Amended Complaint purports to characterize statements made during the program, CNN, Inc. respectfully refers the Court to the program, for its true content and meaning, and denies that the program included any false or defamatory statements or insinuations or that CNN, Inc. intended or endorsed any defamatory meaning. To the extent that Paragraph 4 of the Amended Complaint purports to characterize the context or statements made by Plaintiffs during a July 4, 2020 video, CNN, Inc. admits that Plaintiffs repeated the phrase “where we go one, we go all”¹ and “God Bless America”² after taking an oath to the Constitution and respectfully refers the Court to that the video for its true content and meaning. Except as so admitted or referred, CNN, Inc. denies each and every allegation in Paragraph 4 of the Amended Complaint.

5. CNN, Inc. admits the allegation in Paragraph 5 of the Amended Complaint that it published the Report on YouTube and linked to the Report in a tweet, as shown in the screenshot in Paragraph 5 of the Amended Complaint, and respectfully refers the Court thereto for its true

¹ CNN, Inc. denies each and every allegation in footnote 1 of the Amended Complaint. CNN, Inc. affirmatively alleges that the United States District Court for the District of Columbia described “where we go one, we go all” as a “slogan used by adherents of the QAnon conspiracy theory.” *United States v. Languerand*, No. 21-CR-353 (JDB), 2021 WL 36747, at *3 (D.D.C. Aug. 19, 2021).

² CNN, Inc. admits the allegation in footnote 2 of the Amended Complaint that it published the video of the July 4 oath, as well as an article by Marshall Cohen regarding non-party Flynn’s Twitter post, and respectfully refers the Court to those documents for their true content and meaning. CNN, Inc. otherwise denies the remaining allegations in footnote 2 of the Amended Complaint.

content and meaning. Except as so admitted or referred, denies each and every allegation in Paragraph 5 of the Amended Complaint.

6. CNN, Inc. lacks information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 6 of the Amended Complaint regarding Plaintiffs' receipt of notice from a friend regarding CNN, Inc.'s reporting and, on that basis, CNN, Inc. denies the allegations. CNN, Inc. further denies each and every of the remaining allegations in Paragraph 6 of the Amended Complaint.

7. CNN, Inc. admits that Plaintiffs seek presumed damages, actual damages, special damages and punitive damages in their suit. CNN, Inc. otherwise denies the remaining allegations in Paragraph 7 of the Amended Complaint.

II. PARTIES

8. CNN, Inc. denies the allegations in Paragraph 8 of the Amended Complaint that it made false allegations or defamed Plaintiffs. CNN, Inc. otherwise lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 8 of the Amended Complaint and, on that basis, CNN, Inc. denies the remaining allegations.

9. CNN, Inc. admits that is a Delaware corporation, but denies its principal place of business is in New York. CNN, Inc. admits that it is indirectly owned by Warner Media, LLC, which in turn is owned by AT&T Inc. CNN, Inc. admits that it owns and operates numerous news platforms and services, including the website www.cnn.com and the network known as "CNN" and millions watch CNN every month. Paragraph 9 otherwise contains legal conclusions that require no response. To the extent any response is required, CNN, Inc. denies the remaining allegations in Paragraph 9 of the Amended Complaint.

III. JURISDICTION AND VENUE

10. Paragraph 10 of the Amended Complaint contains legal conclusions that require no response. To the extent a response is required, CNN, Inc. admits that Plaintiffs purports to seek \$75,000,000 in damages, which meets the amount-in-controversy requirement of 28 U.S.C. § 1332.

11. Paragraph 11 of the Amended Complaint calls for legal conclusions that require no response. To the extent a response is required, CNN, Inc. denies each and every allegation contained in Paragraph 11 of the Amended Complaint.

12. Paragraph 12 of the Amended Complaint contains legal conclusions that require no response. To the extent a response is required, CNN, Inc. does not contest that venue is proper in the Southern District of New York.

COUNT I – DEFAMATION PER SE

13. CNN, Inc. incorporates and repeats as if fully set forth herein its responses to the allegations in paragraphs 1 through 12 of the Amended Complaint.

14. Plaintiffs' claim relevant to the allegations in Paragraph 14 of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the allegations remain, CNN, Inc. admits Jack Flynn maintained a Twitter account @GoJackFlynn and that the Tweet displayed in Paragraph 14 was posted on that account, which speaks for itself. CNN, Inc. also admits that Leslie Flynn maintained a Twitter account. Except as so admitted, CNN, Inc. lacks information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 14 of the Amended Complaint and, on that basis, CNN, Inc. denies each and every remaining allegation in Paragraph 14.

15. Plaintiffs' claim relevant to the allegations in Paragraph 15 of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the

allegations remain, CNN, Inc. admits that it telecasted a Special Report on QAnon by Anderson Cooper and respectfully refers the Court to the program for its true content and meaning. Except as so referred, CNN, Inc. denies each and every allegation in Paragraph 15 of the Amended Complaint.³

16. Plaintiffs' claim relevant to the allegations in Paragraph 16 of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the allegations remain, CNN, Inc. admits that Plaintiff Jack Flynn published a tweet on August 21, 2020, which speaks for itself and included the statements identified in Paragraph 16. CNN, Inc. otherwise denies each and every remaining allegation in Paragraph 16 of the Amended Complaint.

17. Plaintiffs' claim relevant to the allegations in Paragraph 17 of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the allegations remain, CNN, Inc. denies each and every allegation in Paragraph 17 of the Amended Complaint.

18. Plaintiffs' claim relevant to the allegations in Paragraph 18 of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the allegations remain, Paragraph 18 of the Amended Complaint contains legal conclusions that require no response. To the extent any response is required, CNN, Inc. denies each and every allegation in Paragraph 20 of the Amended Complaint.⁴

19. Plaintiffs' claim relevant to the allegations in Paragraph 19 of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the

³ CNN, Inc. lacks information sufficient to form a belief as to the truth or falsity of the allegations in footnote 3 of the Amended Complaint and, on that basis, CNN, Inc. denies the allegations.

⁴ CNN, Inc. denies each and every allegation in footnote 4 of the Amended Complaint.

allegations remain, CNN, Inc. denies each and every allegation in Paragraph 19 of the Amended Complaint.⁵

20. Plaintiffs' claim relevant to the allegations in Paragraph 20 of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the allegations remain, Paragraph 20 of the Amended Complaint contains legal conclusions that require no response. To the extent any response is required, CNN, Inc. denies each and every allegation in Paragraph 20 of the Amended Complaint.

21. Plaintiffs' claim relevant to the allegations in Paragraph 21 of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the allegations remain, Paragraph 21 of the Amended Complaint contains legal conclusions that require no response. To the extent any response is required, CNN, Inc. denies each and every allegation in Paragraph 21 of the Amended Complaint.⁶

22. Plaintiffs' claim relevant to the allegations in Paragraph 22 of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the allegations remain, Paragraph 22 of the Amended Complaint contains legal conclusions that require no response. To the extent any response is required, CNN, Inc. denies each and every allegation in Paragraph 22 of the Amended Complaint.

23. Plaintiffs' claim relevant to the allegations in Paragraph 23 of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the allegations remain, Paragraph 23 of the Amended Complaint contains legal conclusions that

⁵ CNN, Inc. denies each and every allegation in footnote 5 of the Amended Complaint.

⁶ CNN, Inc. lacks information sufficient to form a belief as to the truth or falsity of the allegations in footnote 6 of the Amended Complaint and, on that basis, CNN, Inc. denies the allegations. CNN, Inc. respectfully refers the Court to the cited publications which speak for themselves.

require no response. To the extent any response is required, CNN, Inc. denies each and every allegation in Paragraph 23 of the Amended Complaint.

a. Plaintiffs' claim relevant to the allegations in Paragraph 23.a of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the allegations remain, CNN, Inc. admits that Jack Flynn maintained a Twitter account with the handle @GoJackFlynn and that the Tweets incorporated into Paragraph 23.a are from that Twitter feed and speak for themselves.⁷⁸ CNN, Inc. otherwise denies each and every allegation in Paragraph 23.a.⁹¹⁰

b. Plaintiffs' claim relevant to the allegations in Paragraph 23.b of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the allegations remain, CNN, Inc. denies each and every allegation in Paragraph 23.b.

⁷ CNN, Inc. lacks information sufficient to form a belief as to the truth or falsity of the allegations in footnote 7 of the Amended Complaint and, on that basis, CNN, Inc. denies the allegations. CNN, Inc. affirmatively alleges that the allegation that Twitter censored and terminated Jack Flynn's account is inconsistent with the allegation in Paragraph 14 of the Amended Complaint.

⁸ CNN, Inc. admits that it understands hashtags to have the capabilities described in footnote 8 of the Amended Complaint.

⁹ CNN, Inc. respectfully refers the court to the publications listed in this footnote, which speak for themselves. Except as so referred, CNN, Inc. lacks information sufficient to form a belief as to the truth or falsity of the allegations in footnote 9 of the Amended Complaint and, on that basis, CNN, Inc. denies the allegations.

¹⁰ CNN, Inc. respectfully refers the court to the General Flynn speech listed in this footnote, which speaks for itself. Except as so referred, CNN, Inc. lacks information sufficient to form a belief as to the truth or falsity of the allegations in footnote 10 of the Amended Complaint and, on that basis, CNN, Inc. denies the allegations.

c. Plaintiffs' claim relevant to the allegations in Paragraph 23.c of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the allegations remain, Paragraph 23.c of the Amended Complaint contains legal conclusions that require no response. To the extent any response is required, CNN, Inc. denies each and every allegation in Paragraph 23.c.

d. Plaintiffs' claim relevant to the allegations in Paragraph 23.d of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the allegations remain, Paragraph 23.d of the Amended Complaint contains legal conclusions that require no response. To the extent any response is required, CNN, Inc. denies each and every allegation in Paragraph 23.d.

e. Plaintiffs' claim relevant to the allegations in Paragraph 23.e of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the allegations remain, CNN, Inc. denies each and every allegation in Paragraph 23.e.

f. Plaintiffs' claim relevant to the allegations in Paragraph 23.f of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the allegations remain, Paragraph 23.f of the Amended Complaint contains legal conclusions that require no response. To the extent any response is required, CNN, Inc. denies each and every allegation in Paragraph 23.f.

g. Plaintiffs' claim relevant to the allegations in Paragraph 23.g of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the allegations remain, CNN, Inc. denies each and every allegation in Paragraph 23.g.

24. Plaintiffs' claim relevant to the allegations in Paragraph 24 of the Amended Complaint has been dismissed by Court Order. *See* ECF No. 42. To the extent that part of the allegations remain, Paragraph 24 of the Amended Complaint contains legal conclusions that require no response. To the extent any response is required, CNN, Inc. denies each and every allegation in Paragraph 24 of the Amended Complaint.

COUNT II – FALSE LIGHT INVASION OF PRIVACY

25. CNN, Inc. incorporates and repeats as if fully set forth herein its responses to the allegations in paragraphs 1 through 24 of the Amended Complaint.

26. CNN, Inc. denies each and every allegation in Paragraph 26 of the Amended Complaint.

27. CNN, Inc. denies each and every allegation in Paragraph 27 of the Amended Complaint.

28. CNN, Inc. denies each and every allegation in Paragraph 28 of the Amended Complaint.

29. Paragraph 29 of the Amended Complaint contains legal conclusions that require no response. To the extent any response is required, CNN, Inc. denies each and every allegation in Paragraph 29 of the Amended Complaint.

RESPONSE TO PRAYER FOR RELIEF

With respect to the WHEREFORE clauses in the Amended Complaint, CNN, Inc. denies that Plaintiff is entitled to any relief. CNN, Inc. demands a jury on all triable issues.

GENERAL DENIAL

Each numbered paragraph in this Answer responds to the identically numbered paragraph in the Complaint. CNN, Inc. denies all allegations, declarations, claims, or assertions in the

Amended Complaint that are not specifically admitted in this Answer. To the extent the headings contained in the Complaint constitute allegations, such allegations are denied.

AFFIRMATIVE DEFENSES

Further responding to the Amended Complaint, CNN, Inc. asserts the following defenses. CNN, Inc. does not admit to having the burden of proof and/or the burden of persuasion with respect to any of these defenses. By designating the following as defenses, CNN, Inc. does not in any way waive or limit any defenses that are or may be raised by their denials, allegations, and averments set forth herein. These defenses are pleaded in the alternative, are raised to preserve CNN, Inc.'s right to assert such defenses, and are raised without prejudice to CNN, Inc.'s ability to raise other and further defenses. CNN, Inc. reserves the right to amend, supplement, and/or otherwise modify this Answer, including without limitation the right to assert additional defenses that become known to CNN, Inc. through discovery or otherwise:

FIRST DEFENSE

Plaintiffs' claims for relief against CNN, Inc. are barred because the statements about which Plaintiffs complain are privileged and protected by the First Amendment to the United States Constitution, applicable state constitution(s), or the common law.

SECOND DEFENSE

Plaintiffs' claims are barred because the statements about which Plaintiffs complain are substantially true and thus cannot be the basis for a defamation or false light action. As their tweets, public statements and actions make clear, both Jack Flynn and Leslie Flynn have publicly expressed support for and association with QAnon and are followers of QAnon.

THIRD DEFENSE

Plaintiffs' claims are barred because the statements about which Plaintiffs complain constitute statements of opinion, statements that cannot demonstrably be proven true or false, statements that characterize disclosed facts, and/or rhetorical hyperbole

FOURTH DEFENSE

Plaintiffs' claim is barred because the statements about which Plaintiffs complain are privileged and protected under state common law privileges, including the fair comment privilege and neutral report privilege.

FIFTH DEFENSE

Plaintiff Jack Flynn's claims are barred because he is a public figure and cannot prove by clear and convincing evidence that CNN, Inc. acted with actual malice in publishing the statements about which he complains. CNN, Inc. was aware before the allegedly defamatory statements were published that Plaintiffs had not only said the QAnon slogan with General Michael Flynn on July 4, 2020, but also personally publicized their having done so by retweeting the video and calling upon their brother to retweet it. CNN, Inc., therefore, had no knowledge of falsity of the alleged defamatory meaning.

SIXTH DEFENSE

Plaintiffs' claims are barred to the extent this Court finds them to be private figures because Plaintiffs cannot prove that Defendants were negligent in making the alleged defamatory statements. CNN, Inc. was aware before the allegedly defamatory statements were published that Plaintiffs had not only said the QAnon slogan with General Michael Flynn on July 4, 2020, but also personally publicized their having done so by retweeting the video and calling upon their brother to retweet it. CNN, Inc., therefore, had no reason to doubt that Plaintiffs were QAnon followers.

SEVENTH DEFENSE

Plaintiffs' claims are barred because the statements about which Plaintiffs complain did not defame Plaintiffs. Plaintiffs actually made the statements as reported by CNN, Inc. in the telecast(s), article(s), and program(s).

EIGHTH DEFENSE

Plaintiffs' claims are barred because the statements about which Plaintiffs complain did not cause them to suffer actual injuries and/or damages for which CNN, Inc. is liable, and any damages suffered were mitigated.

NINTH DEFENSE

Plaintiffs' claim are barred because they have suffered no reputational harm as any statements complained of or inferences derived therefrom are consistent with their reputation in the community.

TENTH DEFENSE

Plaintiffs' claims are barred because the statements about which Plaintiffs complain were not made with common law malice, and CNN, Inc. did not commit any outrageous conduct that was malicious, wanton, reckless, or in willful disregard of Plaintiffs' rights.

ELEVENTH DEFENSE

Plaintiffs' claim for punitive damages is barred because it would violate CNN, Inc.'s right to procedural and substantive due process under the Fifth and Fourteenth Amendments to the United States Constitution because, among other things, the alleged conduct here is not sufficiently reprehensible to warrant any punitive damages recovery.

CNN, Inc. reserves the right to assert additional affirmative defenses as they may become apparent or available.

RELIEF REQUESTED

WHEREFORE, CNN, Inc. prays for judgment as follows:

1. That Plaintiffs be denied any requested relief in this action;
2. For dismissal of Plaintiffs' Amended Complaint with prejudice;
3. That judgment on Plaintiffs' claims be entered in favor of CNN, Inc. and that CNN, Inc. recover its reasonable costs, attorneys' fees, and disbursements;
4. For such other and further relief as the Court may deem just and proper.

Dated: New York, New York
January 14, 2022

Respectfully submitted,

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